

114 FERC ¶ 61,057
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Sudeen G. Kelly.

Midwest Independent Transmission System Operator, Inc.	Docket Nos. ER05-6-001, -002, -003, -005, -007, -009, -013, 014, -016, -017, -018, -019, -020, -021, -022, -024, -026, -029, -031, -034
Midwest Independent Transmission System Operator, Inc. PJM Interconnection, LLC, <i>et al.</i>	Docket Nos. EL04-135-003, -004, -005, -007, -009, -011, -015, 016, -018, -019, -020, -021, -022, -023, -024, -026, -028, -031, -033, -036
Midwest Independent Transmission System Operator, Inc. PJM Interconnection, LLC, <i>et al.</i>	Docket Nos. EL02-111-020, -021, -022, -024, -026, -028, -031, -033, -034, -036, -037, -038, -039, -040, -041, -042, -044, -046, -049, -051, -054
Ameren Services Company, <i>et al.</i>	Docket Nos. EL03-212-017, -018, -019, -021, -023, -025, -029, -030, -032, -033, -034, -035, -036, -037, -038, -040, -042, -045, -047, -050

ORDER SHORTENING DATE FOR INITIAL DECISION

(Issued January 20, 2006)

1. In this order, we direct the Administrative Law Judge to issue an initial decision in this proceeding by August 11, 2006.

Background

2. In a November 18, 2004 Order,¹ the Commission adopted license plate rates (for the recovery of the cost of existing facilities and required the development of an inter-Regional Transmission Operator (RTO) cost allocation methodology for the pricing of new cross-border facilities built in one RTO but providing benefits to customers in

¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶ 61,168 (2004). Subsequently, the Commission clarified that AEP, ComEd, and Dayton may also recover *intra*-RTO lost revenues through the SECA. *Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶ 61,243 (2004).

another RTO) to replace rate pancaking, or through and out rates, that the Commission had found unjust and unreasonable for transactions between customers located in the Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C. The Seams Elimination Cost Adjustment (SECA) was also adopted as a transition mechanism to mitigate abrupt cost shifts resulting from the replacement of rate pancaking with license plate rates.²

3. Through orders issued on February 10, June 16, September 12, and October 6, 2005,³ the Commission accepted and set for hearing four sets of SECA implementation filings. After the February 10, 2005 Order issued, the presiding judge adopted a procedural schedule with a trial-type hearing to commence in April 2006. After the June 16, 2005 Order issued, setting additional compliance filings for hearing and consolidating that hearing with the hearing already underway, the presiding judge suspended the procedural schedule and scheduled a conference for July 18, 2005, to establish a new procedural schedule. On July 20, 2005, the Chief Judge extended the proceeding to accommodate the consolidation, providing that a hearing would be held on May 17, 2006, and an initial decision issued on October 11, 2006.⁴

4. SECA hearing procedures are currently ongoing and are expected to conclude in late 2006.

Discussion

5. In the joint explanatory statement in the conference report accompanying the Energy and Water Development Appropriations Act, Congress stated:

² Many of the parties previously had entered into the “Going-Forward Principles and Procedures” settlement, in which the transmission owners committed to file pricing proposals by October 1, 2004, and which also provided that “back-stop” SECA compliance filings would be made on or before November 24, 2004, to take effect subject to nominal suspension and refund on December 1, 2004, if the Commission could not otherwise put into effect a replacement rate design that eliminates seams on December 1, 2004. *Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 61,262 (2004).

³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 110 FERC ¶ 61,107 (2005); *Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,409 (2005); *Midwest Indep. Transmission Sys. Operator, Inc.*, 112 FERC ¶ 61,267 (2005); *Midwest Indep. Transmission Sys. Operator, Inc.*, 113 FERC ¶ 61,010 (2005).

⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. ER05-6-001 *et al.* (July 20, 2005) (unpublished order).

The conferees are aware that the Federal Energy Regulatory Commission has begun requiring the collection of wholesale electric charges to address costs associated with crossing “seams” between neighboring Regional Transmission Organizations, also known as “Seams Elimination Cost Adjustment.” While recognizing that legitimate costs should be recovered, the conferees are troubled about whether the Commission has applied these fees without a clear accounting of actual costs or proper allocation, permitted SECA charges to go into effect without those charges having been filed or even disclosed, used “baselines” that may not reflect actual power flows and otherwise failed to provide proper and appropriate procedural protections to all parties. *The conferees expect the Commission to review its SECA policies and take expeditious and appropriate remedial steps.*⁵

Accordingly, the Commission directs the Administrative Law Judge to issue an initial decision in these proceedings by August 11, 2006.

By the Commission. Commission Kelly dissenting with a
separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

⁵ H.R. Rep. No. 109-275 (2005), Cong. Rec. H9911-12 (daily ed. Nov. 7, 2005) (emphasis added).

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(Issued January 20, 2006)

KELLY, Commissioner, *dissenting*:

By this Order, the Commission arbitrarily moves up the deadline set by the Chief Administrative Law Judge for the issuance of the initial decision in this case. The Commission states that it takes this action in order to address the desire of the conferees to the Energy and Water Development Appropriations Act that the Commission “review its SECA policies and take expeditious and appropriate remedial steps.” However, this Order does not constitute a review of, or remedy to, our SECA policies. Additionally, this Order threatens to run counter to two other desires expressed by the conferees regarding SECA, namely that the Commission provide a “clear accounting of actual costs or proper allocation” of SECA charges and provide “proper and appropriate procedural protections to all parties” impacted by SECA. Therefore, I dissent from this Order.

SECA charges are currently being recovered from participants in the Midwest Independent Transmission System Operator (MISO) market. These charges will expire in April 2006. The instant case is merely a proceeding to account for the actual costs giving rise to these SECA charges and to provide for the proper allocation of SECA charges. The instant case does not concern itself with the Commission's SECA policies. Therefore, ordering that the decision in this case be issued two months before the date that the Chief Administrative Law Judge has determined is the appropriate procedural deadline will do nothing to "remedy" our SECA policies. On the contrary, it will cause the hearing process set for this case to be truncated.

I believe that arbitrarily interfering with the hearing process in this case runs counter to the conferees' desire that the parties have "proper and appropriate procedural protections." Shortening the hearing process in this case may also impede the ultimate goal of the hearing, i.e., to arrive at a "clear accounting of actual costs [and] proper allocation" of the SECA charges. This too would run counter to the conferees' wishes. Finally, because the Commission has not even sought comment on its decision to shorten the process, the Commission risks denying the parties their due process rights. If that is the result of this Order, the decision in this case will not withstand judicial scrutiny on due process grounds. Then the Commission would have to revisit its decisions in this case, which would delay a resolution of these important issues. Such a delay would be contrary to the conferees' concern that the Commission act in an "expeditious" manner.

Accordingly, for these reasons, I respectfully dissent.

Sudeen G. Kelly